Bureau of TennCare
Policy Manual

Policy PAY 07-001 (rev. 1)	
Subject: Hospice and Patient Liability	
Approval:	**Date:** 10/30/2007

PURPOSE OF POLICY STATEMENT:

The purpose of this policy is to explain how patient liability should be treated when patients who are receiving TennCare-reimbursed Nursing Facility (NF) care elect the hospice benefit. All other hospice payment-related issues are covered in Policy BEN 07-001. As this is a clarification of current federal statutory and regulatory requirements and how such requirements should be applied, there is no effective date for this policy. All requirements elaborated herein are currently applicable.

DISCUSSION:

When a TennCare enrollee elects the hospice benefit, he may receive hospice services in either his home or a Nursing Facility (NF). These services are delivered by his MCO. When he elects to receive hospice services in a NF, the MCO is responsible for paying for his room and board in the NF, rather than the Bureau of TennCare. The hospice payment to the NF for the provision of services, taking into account the room and board furnished by the facility, is to be at least 95% of the NF's Medicaid-established per diem.[1]

Sometimes an enrollee who elects the hospice benefit is already receiving Medicaid-reimbursed NF care at the time he elects the hospice benefit. A TennCare enrollee who has acquired eligibility in an institutional category and who is living in a NF does not lose his institutional eligibility status when he elects hospice. In most cases, this is the only eligibility category in which the person will continue to qualify for Medicaid coverage. The State is required to apply the same federal post-eligibility provisions to

[1] 42 USC §1396a(a)(13)(B); Policy BEN 07-001.
[2] *State Medicaid Manual* §3584

institutionally eligible individuals living in NFs that are receiving hospice care as are applied to other institutionally eligible individuals receiving NF care.[2] This means that patient liability (the amount contributed by the individual to the cost of his NF care, as determined by DHS) must be collected by the NF to offset the cost of hospice services, including amounts for room and board, that are paid to the NF.

In addition to federal requirements regarding continued collection of patient liability for hospice patients in NFs, it is critical that collection of patient liability continue when a NF resident elects hospice care, since without a patient liability deduction, an enrollee could accumulate enough income and resources to potentially make him ineligible for TennCare.

A NF cannot keep both the patient liability and the full amount of the negotiated per diem from the hospice, since to do so would mean that the Nursing Facility is out of compliance with the requirement that providers participating in TennCare must accept TennCare payment, plus any applicable copays and amounts paid in lieu of TennCare payments by third party payers (Medicare, insurance), as payment in full.[3]

POLICY:

1. For an enrollee already residing in a NF who elects hospice care, the MCO assumes the responsibility for provision of hospice services to this individual on the first day that the hospice agency sees the enrollee.

   Example: On Tuesday, Mrs. Jones notifies the NF that she wants to receive hospice care. The hospice agency is unable to send anyone until that Friday. The NF remains responsible for Mrs. Jones through Thursday. When the hospice agency begins providing services on Friday, the MCO assumes the responsibility for her care in the NF.

2. The Bureau of TennCare will continue to make payments to the NF up to the day hospice care is initiated. (In the example above, the Bureau would make NF payments through Thursday.) On the day a hospice agency begins providing services, the MCO will be responsible for the hospice services, including the patient's room and board at the NF.

3. Once hospice care has begun, the hospice agency will negotiate a rate with the NF for the provision of services, taking into account the room and board furnished by the facility, that is equal to at least 95% of the rate that would have been paid by the State for NF services in that facility for that individual.

4. If the patient already has patient liability that is being paid to the NF, the NF must continue to collect the patient liability from the patient after the patient has begun receiving hospice care.

[3] Ibid

5. The NF will invoice the hospice agency for the negotiated per diem rate. (See #3 above.) On the invoice, the NF shall show a credit for the patient liability amount that the nursing facility is responsible for collecting.

6. The hospice's payment obligation will then be at least 95% of the NF's Medicaid-established per diem payment, times the number of days the patient was in hospice care, less the amount of patient liability, where applicable, that the NF is responsible for collecting. This will be the amount submitted in the hospice's claim to the MCO.

7. Total reimbursement to the NF shall consist of the hospice payment for at least 95% of the Medicaid-established per diem for the NF, which constitutes payment in full according to TennCare Rules and Regulations.[2] There are no copays for hospice or nursing facility services.

   Example: Mrs. Jones is living in ABC Nursing Facility and has elected hospice care, with XYZ Hospice serving as her provider. The amount owed to ABC Nursing Facility for the services provided to Mrs. Jones will be a negotiated per patient day amount that can be no less than 95% of the nursing facility's established Medicaid per diem. In this example, the negotiated per diem is $95 (or $2,850 per 30-day month) which is 95% of the nursing facility's established Medicaid per diem of $100 per day (or $3,000 per 30-day month). Mrs. Jones, however, has a patient liability of $500 per month that must be collected by the nursing facility and reflected as a credit towards the hospice bill. When ABC Nursing Facility bills XYZ Hospice its monthly charge of $2,850 for Mrs. Jones' room and board for the month of August, ABC Nursing Facility will show the patient liability amount of $500 as a credit against the hospice charge of $2,850. XYZ Hospice will be responsible for paying ABC Nursing Facility $2,350.

Entity Responsibility:

- **Enrollee/Patient:**
  - Notify NF that hospice care has been elected, including waiver of right to Medicaid payment for services related to the treatment of the terminal condition for which hospice care was elected or treatment of a related condition as specified in *State Medicaid Manual* § 4305.2.
  - Notify hospice agency [must be in MCO's network of providers].
  - Continue to make DHS-determined patient liability payments to the NF to be applied to room & board charges.
- **Nursing Facility:**

- Advise the Hospice Agency of the amount of patient liability as determined by DHS. The amount to be deducted from the hospice payment to the NF is the amount of patient liability *as determined by DHS,* regardless of the amount the NF collects.
- Terminate submission of claims to TennCare for provision of NF room and board services as of the date hospice care is initiated. (In *rare* instances where a hospice patient is not dually eligible, the NF may continue to bill TennCare ***only*** for medically necessary non-hospice related services or medications that are outside the scope of treatment for the terminal diagnosis or a condition related to the terminal diagnosis, e.g., insulin.)
- Notify the Bureau's Long Term Care Division of enrollee's decision to initiate hospice care via patient status code change to 05 via the claims submission process.
- Provide room and board services as specified in the Medicare Policy Benefits Manual, consisting of performance of personal care services, including but not limited to:
  - Assistance in activities of daily living (ADLs);
  - Administration of medication;
  - Maintaining cleanliness of enrollee's room; and
  - Supervision and assisting in the use of DME and prescribed therapies.
- Continue to collect patient liability (as applicable).
- As with all other NF residents, collect patient liability from the effective date of TennCare coverage, i.e., the day that TennCare begins paying for care in the NF, regardless of whether the person is receiving a LTC or hospice benefit in the NF. Usually, this is the latter of: 1) the effective date of LTC (including Medicaid *and* PAE) eligibility; 2) the date of admission to the NF; or 3) the date when Medicare benefits for Level II care have been exhausted. For persons with retroactive Medicaid eligibility, patient liability must be collected effective from the first day that TennCare begins paying for LTC (or hospice) services.
- Bill the hospice agency for the cost of room and board provided to the hospice patient, reflecting patient liability as a credit against room and board charges.
- Prorate the appropriate amount of patient liability to be applied as a credit to the hospice room and board charges, while applying the remainder of patient liability (if applicable) to NF services provided prior to election of the hospice benefit. *Example: Mrs. Jones is a Medicaid eligible resident residing in XYZ nursing home for the month of June. She elects and begins hospice care on June 21st. Mrs. Jones has a monthly patient liability of $450.00 ($15.00 @ day). The NF will collect the full month of patient liability. The first 20 days of patient liability ($15.00 x 20 or $300.00) will be applied as a credit against the NF charges billed to the State. The remaining 10 days of patient liability ($15.00 x 10 or $150) will be deducted from the amount billed to the hospice agency for hospice care.*

- **MCO:**

- Pay the hospice agency according to the MCO/provider contract.

- **Hospice Agency:**
  - Negotiate a rate of reimbursement with the NF for the provision of services, taking into account the room and board furnished by the facility, that is equal to at least 95% of the rate that would have been paid by the State for NF services in that facility for that individual. If the resident has an approved PAE for Level II services and documentation of approval for Level II reimbursement (i.e., a copy of the approved Level II PAE form or approval letter) is provided as requested to the Hospice Agency (and as requested to the MCO), such rate must be at least 95% of the rate that would have been paid by the State for Level II NF services. The State's determination of medical necessity (i.e., PAE eligibility) for Level II NF care shall be accepted by the Hospice Agency and the MCO; separate justification to the Hospice Agency or MCO will not be required.
  - Obtain from the NF the amount of patient liability, as determined by DHS, for NF services.
  - Provide hospice services to the enrollee.
  - Receive bill from NF and pay NF for the provision of services, taking into account the room and board furnished by the facility, which shall be at least 95% of Medicaid-established per diem rate [where applicable, the patient liability is reflected as a credit on the NF's invoice].
  - Bill the MCO according to the MCO/provider contract, reflecting patient liability as a credit against room and board charges. Charges may be submitted to the MCO prior to receipt of a bill from the facility, so long as such charges reflect applicable patient liability as a credit on the hospice agency's invoice.

- **Bureau of TennCare:**
  - Stop Long-Term Care payments to the NF as of the day hospice care is initiated (i.e., the last date of NF payment shall be the day *before* hospice care begins).
  - Enrollee remains in the institutional Medicaid eligibility category while in the Hospice Program, as long as the enrollee resides in the NF and continues to meet the medical and financial criteria for that institutional category.

DEFINITIONS:

Patient Liability: the amount that a Medicaid-eligible patient is required to contribute to the cost of his care in a Nursing Facility, as determined by DHS in accordance with 42 CFR 436.832.

OFFICES OF PRIMARY RESPONSIBILITY:

TennCare Office of Networks
TennCare Division of Long Term Care

REFERENCES:

42 USC §1396a(a)(13)(B)
42 CFR §§ 435.27, 435.217, 435.725, 435.733, 435.832, & 42 CFR 436.832
State Medicaid Manual §§ 3259, 3584, & 4305.2
TennCare Rule 1200-13-13-.08
TennCare Rule 1200-13-14-.08
Policy Statement BEN 07-001